

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAM SMITH,)
)
Petitioner,)
v.) CIVIL ACTION
) NO. 09-10434-NMG
DUANE MacEACHERN,)
)
Respondent.)

**REPORT AND RECOMMENDATION ON PETITION FOR
WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254**

February 21, 2019

DEIN, U.S.M.J.

I. INTRODUCTION

The petitioner, Sam Smith ("Smith" or the "defendant" or the "petitioner"), was convicted of first degree murder by a Suffolk County, Massachusetts jury on June 12, 2001 for the shooting death of Steven Gaul. He was sentenced to life in prison without the possibility of parole. Smith filed a motion for a new trial on June 24, 2004, which was denied on February 10, 2006. His conviction, and the denial of his motion for a new trial, were affirmed by the Massachusetts Supreme Judicial Court ("SJC") on January 11, 2008. Commonwealth v. Smith, 450 Mass. 395, 879 N.E.2d 87 (2008) ("Smith I"). On January 24, 2008, Smith sought a rehearing from the SJC, which was denied on April 4, 2008. Smith sought a writ of certiorari from the United States Supreme Court, which was denied on October 6, 2008. Smith v. Massachusetts, 555 U.S. 893, 129 S. Ct. 202, 172 L. Ed. 2d 161 (2008).

After consideration of all the objections thereto (Docket Nos. 208, 209 and 211), Report and Recommendation is accepted and adopted. SGN/GB, USDT 6/20/19